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Tax Bites

Welcome to the latest edition of RPC's Tax Bites - providing monthly bite-sized updates from the tax world.

As always, if there are any areas you would like more information on (or if you have any questions or feedback), please let us know or get in touch with your usual RPC contact.

News



HMRC to write to individuals who may have exceeded their BADR lifetime allowance

HMRC has **announced** that it will be reviewing 2020/21 tax returns for those individuals who, according to HMRC's information, have exceeded their Business Asset Disposal Relief (previously known as Entrepreneurs' Relief) lifetime allowance which is currently £1 million.

The gains reported in their 2020/21 returns might have taken those individuals over this limit, or the limit may not have been available prior to 2020/21, due to exceeding the limit in an earlier year. The taxpayers concerned will be asked to check their 2020/21 returns, make any appropriate amendments, and inform HMRC accordingly. Those who do not take any action may face having their return looked into and amended by HMRC.



Government announces UK implementation of OECD proposals for global minimum corporate tax rate to be deferred to 2024

The government has **announced** that the UK legislation on the implementation of the OECD proposals for a global minimum corporate tax rate will apply to accounting periods ending on or after 31 December 2023. In the UK's consultation on UK implementation of this particular aspect (pillar two) of the OECD's wider proposals on addressing the tax challenges arising from the digitalisation of the economy, the original proposed start date was 1 April 2023.

The government has acknowledged concerns raised in the consultation about the lead-in time before UK implementation, given the complexity of the rules, ongoing discussions with the OECD concerning policy and administrative issues, and the need for businesses to take preparatory steps to ensure compliance. The deferral of the start date will be confirmed in a formal consultation response to be published later this summer.



HMRC issue new super-deduction guidance

HMRC has issued new **guidance** on the capital allowances super-deduction and special rate first year allowance. Super-deduction and special rate first year capital allowances are temporary allowances that can be claimed on the cost of qualifying plant and machinery.

The guidance covers checking eligibility for the super-deduction or special rate first year allowance, working out how much can be claimed on qualifying plant and machinery costs, and how to calculate the balancing charge when disposing of an asset on which the super-deduction or special rate first year allowance has been claimed.

Case reports

Permission from the Upper Tribunal needed to argue new point which was not before the First-tier Tribunal



In *Wyatt Paul v HMRC* [2022] UKUT 116 (TCC), the Upper Tribunal (**UT**) confirmed that a party must seek the UT's permission to argue a point that was not argued before the First-tier Tribunal (**FTT**). The UT refused HMRC permission to argue a point on estoppel by convention, as the new argument would involve findings of fact having to be made.

This decision serves as a timely reminder to litigants in tax appeals of the importance of raising all relevant arguments before the FTT, particularly where such arguments require findings of fact to be made. The UT (and higher appeal courts) will be reluctant to allow reliance on new arguments which involve findings of fact.

You can read our commentary on the decision [here](#).



Appeal against discovery assessment allowed as SATR was filed by unauthorised agent

In *Shaun McCumiskey v HMRC* [2022] UKFTT 128 (TC), the FTT allowed the taxpayer's appeal against a discovery assessment as his self-assessment tax return (**SATR**), which included a fabricated claim for Seed Enterprise Investment Scheme (**SEIS**) relief, had been filed by an unauthorised agent. The taxpayer was not aware that his SATR included the fabricated claim for SEIS relief.

As the taxpayer was an innocent party and did not receive the original rebate, the outcome of this appeal is not surprising. What is surprising is the fact that HMRC sought to recover the loss from the taxpayer and considered it appropriate to issue a discovery assessment to achieve that aim. It should have been apparent to HMRC that the loss of tax was not brought about by any careless or deliberate conduct on the part of the taxpayer. The FTT also confirmed that there was sufficient information available to the HMRC officer to doubt the validity of the SEIS claim for relief. A SEIS investment is usually made by higher-rate taxpayers and the amount of income declared in the taxpayer's SATR was exactly £30,000. Accordingly, the conditions which have to be met in section 29(4) and (5), Taxes Management Act 1970, in order for a discovery assessment to be valid, were not satisfied and that should have been apparent to HMRC.

You can read our commentary on the decision [here](#).



Directors did not breach fiduciary duty in relation to insolvent company's participation in failed tax avoidance scheme

In *Stephen John Hunt (Liquidator of Marylebone Warwick Balfour Management Ltd) v Richard Balfour-Lynn and others* [2022] EWHC 784 (Ch), the High Court decided that the directors of a company which went into liquidation after participating in an ineffective tax avoidance scheme did not breach their fiduciary duties and payments made pursuant to the scheme were not transactions defrauding creditors.

This judgment will provide some comfort to the directors of companies which have participated in tax avoidance arrangements and subsequently gone into liquidation. Where directors sought, and followed, appropriate professional advice in relation to such arrangements, it will be difficult for liquidators to successfully argue that the directors concerned were in breach of their fiduciary duty by entering into such arrangements.

You can read our commentary on the judgement [here](#).



And finally...

In 'Cautionary tale' (*Taxation*, 7 April 2022, page 23), *Taxation magazine's* esteemed editor-in-chief, Andrew Hubbard, disclosed how he narrowly avoided entering into a cross-border conspiracy to commit tax evasion via a bass recorder – the woodwind instrument, not the electronic device for digitally recording bass guitar. In a follow up [article](#), we discuss what constitutes dishonesty and conspiracy to commit 'tax evasion'.

We leave you with these words of wisdom: 'Dance like no one is watching; email like it will be read out in court' (credited to Olivia Nuzzi, a reporter for *The Daily Beast*).

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If you have any queries or comments, please contact:



Adam Craggs
Partner
+44 20 3060 6421



Constantine Christofi
Senior Associate
+44 20 3060 6583



ADVISORY | DISPUTES | REGULATORY | TRANSACTIONS

Tower Bridge House St Katharine's Way London E1W 1AA
T +44 20 3060 6000 F +44 20 3060 7000 DX 600 London/City rpc.co.uk

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